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10/694,737

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Roger Yen-Luen Tsai

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12/08/2008

WHITHAM, CURTIS & CHRISTOFFERSON & COOK, P.C.

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EXAMINER

CARDENAS NAVIA, JAIME F

ART UNIT

PAPER NUMBER

3624

MAIL DATE

DELIVERY MODE

12/08/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Introduction

1. This **FINAL** office action is in response to communications received on October 1, 2008. Claims 8 and 9 have been amended. Claims 8 and 9 are currently pending.

2. **Examiner's note:** Although examined, the amendment received October 1, 2008 is technically non-responsive.

Applicant is reminded of 37 CFR 1.121(c). Specifically, claim 8 contains the additional clause "eliminating any other forecast due to expert knowledge;" that was not underlined to clearly show that it was being added. Future claim amendments that fail to adhere to the requirements of 37 CFR 1.121 will be considered non-responsive and will not be examined.

Response to Amendment

3. Applicant's amendments to the claims are **sufficient to overcome all the 35 U.S.C. § 112, second paragraph, rejections** as set forth in the previous office action.

4. Applicant's amendments to the claims are **NOT sufficient to overcome the 35 U.S.C. § 101 rejections** set forth in the previous office action.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. **Claims 8 and 9 are rejected** under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Based on Supreme Court precedent (See *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978)) and recent Federal Circuit decisions, a § 101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. If neither of these requirements is met by the claim, the method is not a patent eligible process under § 101.

Independent claims 8 and 9 claim processes that are not properly tied to another statutory class and are therefore directed to non-statutory subject matter. Examiner notes that for process claims implemented on a computer to be considered statutory, they must make clear which steps are executed on the computer and which steps are executed manually. Additionally, nominal recitations of structure, such as in the preamble, do not tie the method to another statutory class.

More specifically, merely stating "computer-implemented" before each step does not satisfy this requirement. "Computer-implemented" could mean that a computer is used to aid in the completion of the step, such as by displaying data, but does not necessarily mean that the computations are performed by the computer.

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Allowable Subject Matter

7. Claims 8 and 9 **would be allowable** if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 101 as set forth in this Office action.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jaime Cardenas-Navia whose telephone number is (571)270-1525. The examiner can normally be reached on Mon-Fri, 10:30AM - 7:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bradley Bayat can be reached on (571) 272-6704. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

November 25, 2008

/J. C./

Examiner, Art Unit 3624

/Bradley B Bayat/

Supervisory Patent Examiner, Art Unit 3624